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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/610,128	07/05/2000	Bruce Kerievsky	1467.006	4622

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EXAMINER

OUELLETTE, JONATHAN P

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/610,128

Applicant(s)


KERIEVSKY, BRUCE

Examiner

Jonathan Ouellette

Art Unit

3629



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 101*

#### *Double Patenting*

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

2. A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

3. **Claims 1-36 are rejected under 35 U.S.C. 101 as claiming the same invention as that of amended claims 1-13 of prior U.S. Patent No. 09/500,599. This is a double patenting rejection.**

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the

prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carmean (US 4,568,810) in view of DelGiorno (US 5,899,502), in view of Neuhaus (US 5,832,446), and further in view of Kolawa et al. (US 6,236,974).**

6. As per Claims 1, 14, and 25, Carmean discloses an apparatus for facilitating the food preparation process, whereby a user can interact with said apparatus to receive instruction for preparation of a variety of dishes, comprising: (a) memory means and (b) selection means (Abstract).

7. Carmean fails to disclose said memory means storing a plurality of cooking recipes in a hierarchically structured database.

8. Neuhaus teaches said memory means storing a plurality of data in a hierarchically structured database (Abstract, C9 L1-45)

9. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a memory means storing a plurality of data in a hierarchically structured database, as disclosed by Neuhaus, in the system disclosed by Carmean, for the advantage of providing an apparatus for facilitating the food preparation process with the ability to better organize information for the cook using typical computer storage means.

10. Carmean and Neuhaus disclose means allowing said user to add recipes to said hierarchically structured database (Neuhaus: Abstract, C9 L1-45).

11. Both Carmean and Neuhaus fail to disclose said selection means allowing said user to select at least one recipe from said plurality of recipes stored in said memory means;

12. DelGiorno teaches said selection means allowing said user to select at least one recipe from said plurality of recipes stored in said memory means; (c) recipe loading means (Abstract, C4 L 1-65).

13. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a selection means allowing said user to select at least one recipe from said plurality of recipes stored in said memory means; and a recipe loading means, as disclosed by DelGiorno in the system disclosed by Neuhaus, in the system disclosed by Carmean, for the advantage of providing an apparatus for facilitating the food preparation process with the ability to store, retrieve, and display recipe information for the cook.

14. Carmean, Neuhaus, and DelGiorno fail to disclose (d) communication means, said communication means communicating cooking instruction from said at least one selected recipe to said user, wherein said communication means further comprise text-to-speech and voice recognition means configured to fulfill and recognize spoken commands given by said user to said apparatus.

15. Kolawa teaches (d) communication means, said communication means communicating cooking instruction from said at least one selected recipe to said user, wherein said communication means further comprise text-to-speech and voice recognition means configured to fulfill and recognize spoken commands given by said user to said apparatus (Abstract, C3 L50-67, C5 L35-50).

16. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a communication means, said communication means communicating cooking instruction from said at least one selected recipe to said user, wherein

said communication means further comprise text-to-speech and voice recognition means configured to fulfill and recognize spoken commands given by said user to said apparatus, as disclosed by Kolawa, in the system disclosed by DelGiorno, in the system disclosed by Neuhaus, and further in the system disclosed by Carmean, for the advantage of providing an apparatus for facilitating the food preparation process with the ability to simplify the process by allowing the cook to give/receive necessary preparation instructions by audio command to/from the computer recipe apparatus; thus, allowing the cook to keep their hands free for the actual food preparation.

17. As per Claims 2, 15, and 26, Carmean, Neuhaus, DelGiorno, and Kolawa disclose editing means, said editing means allowing said user to edit any one of said plurality of cooking recipes stored on said memory means (Carmean: Abstract) (DelGiorno: Abstract, C4 L1-65).

18. As per Claim 3, Carmean, Neuhaus, DelGiorno, and Kolawa disclose wherein said recipe loading means further comprise formatting means, said formatting means changing the format of said added recipes to conform to the format of said plurality of recipes stored on said memory means (Neuhaus: Abstract, C7-8).

19. As per Claims 4, 16, and 28, Carmean, Neuhaus, DelGiorno, and Kolawa disclose displaying means, said displaying means displaying said at least one selection recipe (Carmean: Abstract, C3 L45-67, C4 L35-50, C2 L20-40).

20. As per Claims 5, 17, and 29, Carmean, Neuhaus, DelGiorno, and Kolawa disclose printing means, said printing means printing a number of recipes from said plurality of recipes stored on said memory means (DelGiorno: Abstract).

21. As per Claims 6, 18, and 30, Carmean, Neuhaus, DelGiorno, and Kolawa disclose glossary means, said glossary means providing explanations for terms contained within said cooking recipes (Neuhaus: Abstract, C3 L1-35, C7 L45-55).
22. As per Claims 7, 19, and 31, Carmean, Neuhaus, DelGiorno, and Kolawa disclose timing means, said timing means allowing said user to set time required to prepare said at least one selected recipe (Carmean: Abstract, C4 L50-65, C6-8).
23. As per Claims 8 and 27, Carmean, Neuhaus, DelGiorno, and Kolawa disclose wherein said selection means are further configured to create a list of ingredients from said at least one selected recipe (DelGiorno: Abstract, C2 L25-35).
24. As per Claims 9, 20, and 32, Carmean, Neuhaus, DelGiorno, and Kolawa disclose sending means, said sending means sending a number of recipes from said plurality of recipes stored on said memory means to recipients designated by said user (DelGiorno: Abstract, C2 L12-36, C72 L9-28).
25. As per Claims 10, 21, and 33, Carmean, Neuhaus, DelGiorno, and Kolawa disclose wherein said apparatus is an electronic handheld device (Carmean: Abstract).
26. As per Claims 11, 22, and 34 Carmean, Neuhaus, DelGiorno, and Kolawa disclose wherein said apparatus is a household appliance (Carmean: Abstract, C1).
27. As per Claims 12, 23, and 35, Carmean, Neuhaus, DelGiorno, and Kolawa disclose wherein said is a computer application (Carmean: Abstract).
28. As per Claims 13, 24, and 36, Carmean, Neuhaus, DelGiorno, and Kolawa disclose wherein said apparatus is an Internet website (Carmean: Abstract) (Kolawa: Abstract, C3 L50-67).

*Response to Arguments*

29. Applicant's arguments filed 12/23/03 have been fully considered but they are not persuasive. The rejection will remain as final, based on the cited prior art.

30. The applicant makes the argument that the prior art fails to teach or suggest vocal interactivity.

31. However, as explained in the rejection above, Kolawa teaches (d) communication means, said communication means communicating cooking instruction from said at least one selected recipe to said user, wherein said communication means further comprise text-to-speech and voice recognition means configured to fulfill and recognize spoken commands given by said user to said apparatus (Abstract, C3 L50-67, C5 L35-50).

32. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a communication means, said communication means communicating cooking instruction from said at least one selected recipe to said user, wherein said communication means further comprise text-to-speech and voice recognition means configured to fulfill and recognize spoken commands given by said user to said apparatus, as disclosed by Kolawa, in the system disclosed by DelGiorno, in the system disclosed by Neuhaus, and further in the system disclosed by Carmean, for the advantage of providing an apparatus for facilitating the food preparation process with the ability to simplify the process by allowing the cook to give/receive necessary preparation instructions by audio command to/from the computer recipe apparatus; thus, allowing the cook to keep their hands free for the actual food preparation.



33. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., wireless microphone, cooking multiple recipes at one time) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).
34. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.
35. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

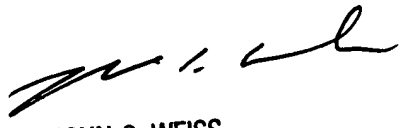
### ***Conclusion***

36. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Ouellette whose telephone number is (703) 605-0662. The examiner can normally be reached on Monday through Thursday, 8am - 5:00pm.
37. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (703) 308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-3597 for After Final communications.

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38. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-5484.

jo  
July 7, 2004



JOHN G. WEISS  
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